

# Union Calendar No. 556

110TH CONGRESS  
2D SESSION

# H. R. 1650

**[Report No. 110–860, Part I]**

To amend the Federal antitrust laws to provide expanded coverage and to eliminate exemptions from such laws that are contrary to the public interest with respect to railroads.

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## IN THE HOUSE OF REPRESENTATIVES

MARCH 22, 2007

Ms. BALDWIN (for herself, Mr. ALEXANDER, Mr. POMEROY, Mr. WALZ of Minnesota, and Mr. BAKER) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committees on Transportation and Infrastructure and Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

SEPTEMBER 18, 2008

Reported from the Committee on the Judiciary with an amendment

[Strike out all after the enacting clause and insert the part printed in *italic*]

SEPTEMBER 18, 2008

Committees on Transportation and Infrastructure and Energy and Commerce discharged; committed to the Committee of the Whole House on the State of the Union and ordered to be printed

[For text of introduced bill, see copy of bill as introduced on March 22, 2007]

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## A BILL

To amend the Federal antitrust laws to provide expanded coverage and to eliminate exemptions from such laws

that are contrary to the public interest with respect to railroads.

1 *Be it enacted by the Senate and House of Representa-*  
 2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 *This Act may be cited as the “Railroad Antitrust En-*  
 5 *forcement Act of 2008”.*

6 **SEC. 2. APPLICATION OF THE ANTITRUST LAWS TO RAIL**  
 7 **COMMON CARRIERS.**

8 (a) *APPLICATION OF THE ANTITRUST LAWS.—The*  
 9 *antitrust laws shall apply to a common carrier by railroad*  
 10 *that is subject to the jurisdiction of the Surface Transpor-*  
 11 *tation Board under subtitle IV of title 49, United States*  
 12 *Code, without regard to whether such common carrier filed*  
 13 *a rate or whether a complaint challenging a rate is filed.*

14 (b) *DEFINITION.—The term “antitrust laws” has the*  
 15 *meaning given it in subsection (a) of the 1st section of the*  
 16 *Clayton Act (15 U.S.C. 12(a)), but includes section 5 of*  
 17 *the Federal Trade Commission Act to the extent such section*  
 18 *5 applies to unfair methods of competition.*

19 **SEC. 3. MERGERS AND ACQUISITIONS OF RAILROADS.**

20 *The last undesignated paragraph of section 7 of the*  
 21 *Clayton Act (15 U.S.C. 18) is amended by inserting “(ex-*  
 22 *cluding transactions described in section 11321 of title 49*  
 23 *of the United States Code)” after “Surface Transportation*  
 24 *Board”.*

1 **SEC. 4. ANTITRUST ENFORCEMENT AUTHORITY.**

2       Section 11(a) of the Clayton Act (15 U.S.C. 21(a)) is  
3 amended by inserting “(excluding agreements described in  
4 section 10706 of such title and transactions described in  
5 section 11321 of such title)” after “Code”.

6 **SEC. 5. INJUNCTIONS AGAINST RAILROAD COMMON CAR-**  
7 **RIERS.**

8       The proviso in section 16 of the Clayton Act (15 U.S.C.  
9 26) is amended by inserting “(excluding a common carrier  
10 by railroad)” after “Board”.

11 **SEC. 6. REMOVAL OF PRIMARY JURISDICTION AS LIMITA-**  
12 **TION.**

13       The Clayton Act (15 U.S.C. 12 et seq.) is amended by  
14 adding at the end thereof the following:

15       “SEC. 29. In any civil action against a common car-  
16 rier railroad under section 4, 4A, 4C, 15, or 16, the district  
17 court shall not be required to defer to the jurisdiction of  
18 the Surface Transportation Board.”.

19 **SEC. 7. UNFAIR METHODS OF COMPETITION.**

20       Section 5(a)(2) of the Federal Trade Commission Act  
21 (15 U.S.C. 45(a)(2)) is amended by adding at the end the  
22 following:

23       “For purposes of this paragraph with respect to unfair  
24 methods of competition, the term ‘common carrier’ excludes  
25 a common carrier by railroad that is subject to jurisdiction

1 *of the Surface Transportation Board under subtitle IV of*  
 2 *title 49 of the United States Code.”.*

3 **SEC. 8. TERMINATION OF EXEMPTIONS IN TITLE 49.**

4 *(a) IN GENERAL.—Section 10706 of title 49, United*  
 5 *States Code, is amended—*

6 *(1) in subsection (a)—*

7 *(A) in the 3d sentence of paragraph (2)(A)*  
 8 *by striking “, and the Sherman Act (15 U.S.C.*  
 9 *1 et seq.),” and all that follows through “or car-*  
 10 *rying out the agreement”,*

11 *(B) in paragraph (4)—*

12 *(i) by striking the 2d sentence, and*

13 *(ii) in the 3d sentence by striking*  
 14 *“However, the” and inserting “The”, and*

15 *(C) in paragraph (5)(A) by striking “, and*  
 16 *the antitrust laws set forth in paragraph (2) of*  
 17 *this subsection do not apply to parties and other*  
 18 *persons with respect to making or carrying out*  
 19 *the agreement”,*

20 *(2) in subsection (d) by striking the last sen-*  
 21 *tence, and*

22 *(3) by striking subsection (e) and inserting the*  
 23 *following:*

24 *“(e) Nothing in this section exempts a proposed agree-*  
 25 *ment described in subsection (a) from the application of the*

1 *antitrust laws (as defined in subsection (a) of the 1st section*  
 2 *of the Clayton Act, but including section 5 of the Federal*  
 3 *Trade Commission Act to the extent such section 5 applies*  
 4 *to unfair methods of competition).*

5       “(f) *In reviewing any proposed agreement described in*  
 6 *subsection (a), the Board shall take into account, among*  
 7 *any other considerations, the impact of the proposed agree-*  
 8 *ment on shippers, consumers, and affected communities.*  
 9 *The Board shall make findings regarding such impact,*  
 10 *which shall be—*

11               “(1) *made part of the administrative record;*

12               “(2) *submitted to any other reviewing agency for*  
 13 *consideration in making its determination; and*

14               “(3) *available in any judicial review of the*  
 15 *Board’s decision regarding such agreement.”.*

16       (b) *COMBINATIONS.—Section 11321 of title 49, United*  
 17 *States Code, is amended—*

18               (1) *in subsection (a)—*

19                       (A) *by striking “The authority” and insert-*  
 20 *ing “Except as provided in sections 4, 4A, 4C,*  
 21 *15, and 16 of the Clayton Act, the authority”;*  
 22 *and*

23                       (B) *in the 3d sentence by striking “is ex-*  
 24 *empt from the antitrust laws and from all other*  
 25 *law,” and inserting “is exempt from all other*

1           *law (except the laws referred to in subsection*  
 2           *(c)),”, and*

3           *(2) by adding at the end the following:*

4           *“(c) Nothing in this subchapter exempts a transaction*  
 5           *described in subsection (a) from the application of the anti-*  
 6           *trust laws (as defined in subsection (a) of the 1st section*  
 7           *of the Clayton Act, but including section 5 of the Federal*  
 8           *Trade Commission Act to the extent such section 5 applies*  
 9           *to unfair methods of competition). The preceding sentence*  
 10          *shall not apply to any transaction relating to the pooling*  
 11          *of railroad cars approved by the Surface Transportation*  
 12          *Board or its predecessor agency pursuant to section 11322.*

13          *“(d) In reviewing any transaction described in sub-*  
 14          *section (a), the Board shall take into account, among any*  
 15          *other considerations, the impact of the transaction on ship-*  
 16          *pers and affected communities.”.*

17          *(c) CONFORMING AMENDMENTS.—*

18                 *(1) HEADING.—The heading for section 10706 of*  
 19                 *title 49, United States Code, is amended to read as*  
 20                 *follows: “**Rate agreements**”.*

21                 *(2) ANALYSIS OF SECTIONS.—The analysis of*  
 22                 *sections of chapter 107 of such title is amended by*  
 23                 *striking the item relating to section 10706 and insert*  
 24                 *the following:*

*“10706. Rate agreements.”.*

1 **SEC. 9. EFFECTIVE DATE.**

2 (a) *IN GENERAL.*—*Except as provided in subsection*  
3 *(b), this Act and the amendments made by this Act shall*  
4 *take effect on the date of enactment of this Act.*

5 (b) *LIMITATION.*—*A civil action under section 4, 4A,*  
6 *4C, 15, or 16 of the Clayton Act, or a complaint under*  
7 *section 5 of the Federal Trade Commission Act (15 U.S.C.*  
8 *45) to the extent such section 5 applies to unfair methods*  
9 *of competition, may not be filed with respect to any conduct*  
10 *or activity that—*

11 (1) *occurs before the expiration of the 180-day*  
12 *period beginning on the date of enactment of this Act;*  
13 *and*

14 (2) *was exempted from the antitrust laws (as de-*  
15 *fined in subsection (a) of the 1st section of the Clay-*  
16 *ton Act (15 U.S.C. 12(a)), but including section 5 of*  
17 *the Federal Trade Commission Act (15 U.S.C. 45) to*  
18 *the extent such section 5 applies to unfair methods of*  
19 *competition) by an order of the Interstate Commerce*  
20 *Commission or the Surface Transportation Board*  
21 *issued before the date of the enactment of this Act and*  
22 *pursuant to law.*

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